

# State of California



## Fair Political Practices Commission

June 13, 1984

Donald G. Freeman  
City Attorney  
P.O. Box 805  
Carmel-by-the-Sea, CA 93921

Re: Your Request for Advice  
Our No. A-84-114

Dear Mr. Freeman:

Your letter requests advice on behalf of yourself and Mr. Eugene R. Hammond, a member of the Carmel-by-the-Sea Planning Commission.

### FACTS

Both you and Mr. Hammond are "founders" of the National Bank of Carmel (Carmel Bancorporation). You have an investment in the bank of more than \$1,000. In addition you have outstanding loans from the bank, which exceed \$250; however, they were made to you in terms generally available to the public and without regard to your official status. Mr. Hammond also has an investment in the bank of more than \$1,000. Neither of you owns 10% or more of the bank and neither of you is an officer, director or employee of the bank.

You advise the planning commission and Mr. Hammond sits on the body. You both anticipate involvement in upcoming decisions affecting property owned by Mr. R. Alan Williams. Mr. Williams is Vice Chairman of the Board of the bank and is a partner in a partnership which has secured a loan from the bank to purchase property from a separate partnership of which Mr. Williams is also a partner. You are both seeking our advice as to whether these facts require disqualification on your parts from any decisions affecting the Williams' property.

### ANALYSIS

Both you and Mr. Hammond are public officials within the meaning of the Political Reform Act<sup>1/</sup> and, hence, are subject to the prohibitions, contained in Section 87100, against making, participating in making, or using your official position to influence any decision in which you have a financial interest. A financial interest is defined in Section 87103 as follows:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Each of you has an investment in the bank of more than \$1,000 as defined in Section 87103(a). While you have received income from the bank in the form of loans which are not excluded under Section 82030(b)(8), they are not a basis for disqualification under Section 87103(c), since the loans are from a commercial lending institution in terms available to the general public and without regard to official status.<sup>2/</sup>

Neither you nor Mr. Hammond owns 10% or more of the bank. Consequently, the question to be addressed is whether any decision by the Planning Commission affecting the Williams' property will have a reasonably foreseeable material financial effect on the bank -- not on Mr. Williams or on his partnership.<sup>3/</sup> That is a factual question to be determined by

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<sup>1/</sup> Government Code Sections 81000-91014. All statutory references are to the Government Code.

<sup>2/</sup> In fact, the loans to you were made before you were recently retained as City Attorney.

<sup>3/</sup> Because you own less than 10% of the bank, Mr. Williams and his partnership are not considered to be a source of income to you or Mr. Hammond. Section 82030.

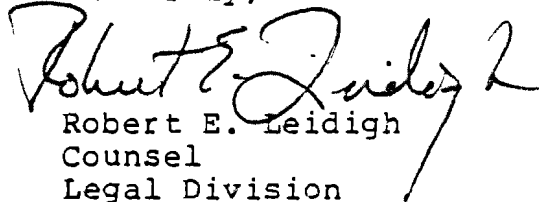
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you and Mr. Hammond at the time a decision is pending.<sup>4/</sup> Only then could it be determined what the likely impact will be on the bank -- it may be none at all. However, if the outcome of the decision could be to cause Mr. Williams and his partnership to default on the loan, thereby costing the bank considerable money, there could be a material financial effect on the bank.

Whether any particular, foreseeable effect on the bank is, in fact, material can be determined by applying the Commission's regulation, 2 Cal. Adm. Code Section 18702(b). Should you desire our assistance in applying the test, please contact us once a specific decision is at hand and we will be pleased to provide such assistance. I may be reached at (916) 322-5901.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh

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<sup>4/</sup> Since each of you has an investment interest in the bank the issue will be the same for each of you. You either both have to disqualify or neither of you has to disqualify.

THOMAS K. PERRY (1904-1971)  
DONALD G. FREEMAN  
THOMAS HART HAWLEY  
A PROFESSIONAL CORPORATION

LAW OFFICES

Perry, Freeman and Hawley

SAN CARLOS BETWEEN 7TH AND 8TH

POST OFFICE BOX 805

Carmel by the Sea, California 93921

TELEPHONE  
AREA CODE 408  
624-5339

May 2, 1984

Diane Fishburn, Esq.  
Fair Political Practices Commission  
1100 K Street  
Sacramento, California 95814

Dear Ms. Fishburn:

Recently, I have been retained by the City of Carmel-by-the-Sea, to represent them as their legal counsel. As such, I received a letter dated April 11, 1984, from Eugene R. Hammond, a member of the Carmel by-the-Sea Planning Commission. The letter is self explanatory.

As I, too, am a founder of the National Bank of Carmel (Carmel Bancorporation), and own 2,000 shares of common stock valued at approximately \$12 per share, I am reluctant to make a decision as to whether or not Mr. Hammond has a conflict of interest in dealing with the Alan Williams proposal to develop the property formerly occupied by the Carmel Lumber Yard. In addition to owning stock in the National Bank of Carmel, I have approximately \$75,000 in loans outstanding with the Bank. Both my stock and loans are disclosed on my Statement of Economic Interests.


Would you please advise me as to whether or not, in your opinion, Mr. Hammond has a conflict of interest as a member of the Planning Commission, voting on Mr. Williams project?

In addition, would you please advise me as to whether or not, in your opinion, I have a conflict of interest that would require me to step aside in advising both the Planning Commission and the City Council on matters relating to Mr. Williams proposed development.

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If you have any questions or comments regarding this matter, or need additional information to enable you to make a decision, please contact me.

Sincerely,

  
DONALD G. FREEMAN

DGF/jdb

EUGENE R. HAMMOND  
POST OFFICE BOX 505  
CARMEL-BY-THE-SEA, CALIFORNIA 93921

April 11, 1984

Mr. Donald G. Freeman,  
City Attorney,  
City of Carmel-by-the-Sea,  
P.O. Box CC,  
Carmel, CA 93921.

Dear Don:

As you are doubtless aware, the Planning Commission, of which I have been a member since January 5, 1984, is likely to be dealing with applications from Alan Williams regarding his proposals for use of the former lumber yard property.

This week, I received the National Bank of Carmel (Carmel Bancorporation) notice of annual shareholders meeting. An extract from that document is enclosed, with the relevant paragraph marked.

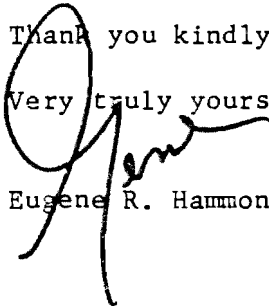
The Form 721 Statement of Economic Interests which I filed upon joining the Planning Commission indicates on Schedule A that (jointly with my wife) I hold Common Stock in the National Bank of Carmel with a value between \$10,001 and \$100,000. (The actual holding is 2,000 shares at an estimated market value of about \$12.00/share.)

Dorrie and I are listed as "Founders" of the Bank, but are not Directors or Officers, and certainly have no involvement in the Williams projects.

I would be most grateful if you would advise me whether my voting on matters related to the Williams projects would represent a Conflict of Interest?

Thank you kindly.

Very truly yours,

  
Eugene R. Hammond

/encl.

### TRANSACTIONS WITH DIRECTORS AND OFFICERS

Certain of the directors and officers of The National Bank of Carmel, the Corporation's wholly-owned subsidiary, and the companies with which they are associated, are customers of and have had banking transactions with the Bank in the ordinary course of the Bank's business. The loans and commitments to loan included in such transactions were made in compliance with applicable law and on substantially the same terms, including interest rates and collateral, as those prevailing for comparable transactions with other persons of similar credit-worthiness and did not involve more than the normal risk of collectibility or present other unfavorable features.

The law firm of Walker, McClure, Bohnen and Brehmer, Monterey, California, of which Mr. George R. Walker, Chairman of the Board of the Corporation and the Bank, is a partner, performs legal services for the Corporation and the Bank from time to time. Such services have been and will be performed at customary hourly rates.

The Bank paid fees of \$220,000.00 in 1983 to Carmel Design for design work in connection with the Bank's proposed Monterey branch and for remodeling the Corporation's main office. Mr. R. Alan Williams, Vice Chairman of the Board of the Corporation, is the owner of Carmel Design.

In June, 1983, the Bank entered into a loan commitment agreement with a partnership of which Mr. R. Alan Williams, Vice Chairman of the Board of the Corporation and the Bank, is a partner. Pursuant to the agreement, the Bank has committed to make certain interest payments on a loan made to the partnership by a third party lender. The proceeds from the loan by the third party lender have been used by the partnership to purchase real property from a separate partnership of which Mr. Williams and six other directors of the Corporation and the Bank are partners and to make improvements on the property. The Bank's obligation to make interest payments begins at the time that the partnership has made total interest payments of \$200,000.00 and continues for one year from the date the Bank makes the first interest payment under the agreement, or until such interest payments equal \$200,000.00, whichever occurs first. In consideration for the Bank's commitment to make interest payments as described above, the partnership has paid \$50,000.00 to the Bank and is further obligated (1) to pay the Bank \$100,000.00 upon close of the construction escrow; (2) to pay the Bank an additional \$50,000.00 within one year from the date the Bank makes the first interest payment or upon sale of the improved property, whichever is earlier; and (3) to reimburse the Bank for any interest payments made plus interest at the Bank's then weekly money market rate plus 5%, within one year from the date that the Bank makes the first interest payment or upon sale of the improved property, whichever is earlier. The above obligations are secured by a third deed of trust on the subject property.